



DANGER: REGISTERING SECURITY INTERESTS AGAINST THE ABN INSTEAD OF ACN CAN BE FATAL!

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FEBRUARY 2017

A recent NSW Supreme Court decision in the matter of *OneSteel Manufacturing Pty Limited (administrators appointed)* [2017] NSWSC 21 (“**the decision**”) has stressed the importance of registering security interests correctly.

In this case, Alleasing P/L (“**Alleasing**”) registered a security interest against the ABN of a company instead of the ACN in an asset financing arrangement and as a result lost all of its rights in relation to the equipment.

Alleasing rented a crusher and certain spare parts for the crusher to Onesteel Manufacturing P/L (“**Onesteel**”). Alleasing spent \$23,329,764.00 in the design, supply, installation, assembly, construction and commissioning of the crusher.

Alleasing registered its security interest on the PPSR but incorrectly included OneSteel’s ABN in the registration, rather than its ACN.

When OneSteel went into administration on 7 April 2016, the administrators of Onesteel claimed that Alleasing’s registrations were defective and that Alleasing’s interest in the crusher had passed to OneSteel.

Alleasing then commenced proceedings and the Court was asked to decide whether Alleasing’s registrations were defective.

KEY POINTS YOU NEED TO KNOW FROM THE DECISION

- The Court found that Alleasing’s registrations were defective because the registrations did not include OneSteel’s ACN.

As a result, when Onesteel went into administration, Alleasing’s security interest in the crusher vested in the Administrator and Alleasing had no further interest in it.

- The Court confirmed this position, despite Alleasing contending that the 9 digit ACN was included within the 11 digit ABN.

- It did not matter that Alleasing’s security interest could be discovered by other searches of the PPSR.

- Section 165(b) the *Personal Property Securities Act 2009* (Cth) (“**the Act**”) makes a registration ineffective if a search of the PPSR by reference to the details required under the *Personal Property Securities Regulations 2010* (Cth) (“**the regulations**”) (here the details required were OneSteel’s ACN and not ABN) was not capable of disclosing the registration.

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- . The decision reinforces the position Courts will take in strictly interpreting the legislation even where the result may seem commercially unfair or lead to an unexpected windfall for administrators and liquidators.
- . Other registration traps that you can fall into include:
 - (a) Registering as a Purchase Money Security Interest (“PMSI”) when you don’t have a PMSI. This could even be the case if you have a PMSI interest but don’t register it in time;
 - (b) Failing to register against the ABN of a trust where you are dealing with a trust and that trust has an ABN;

- (c) For an individual, not registering exactly in accordance with the details as contained in their current driver’s licence.

HOW CAN WE HELP?

If you are a secured party and are concerned about your registrations on the PPSR we can do a PPSA health check for you.

If you think you have issues with any of your registrations don’t vary them or lodge new ones without getting advice first as this may make the situation worse rather than fixing it.

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